

## **Minutes Tempe Police Public Safety Personnel Retirement System Board April 7, 2016**

Minutes of the Tempe Police Public Safety Personnel Retirement System Board, held on Thursday, April 7, 2016, 2:00 p.m., at Tempe City Hall, Third Floor Conference Room, 31 E. 5<sup>th</sup> Street, Tempe, Arizona.

**Board Members Present:**

Joe Brosius  
Kelley McMenemy  
Jeff Millen

**Board Members Absent:**

Mark Mitchell, Mayor  
Bill Munch

**City Staff Present:**

Renie Broderick, Internal Services Director  
Suzanne Olson, Employee Benefits Manager  
Chris Hansen, Risk Manager  
Tammy Milhon, HR Specialist  
Susan Buck, Executive Assistant

**Legal Counsel Present:**

Cynthia Kelley

*Joe Brosius called the meeting to order at 2:07 p.m.*

**ITEM I - Consideration of Meeting Minutes**

Motion by Jeff Millen to table the March 3, 2016 Board Meeting Minutes; and to approve the February 4, 2016 Board Meeting Minutes, the February 4, 2016 Fire & Police Boards Joint Meeting Minutes and the February 4, 2016 Board Executive Session Minutes; second by Kelly McMenemy. Motion passed on a voice vote 3-0.

**ITEM II - Public Appearances**

Joe Brosius stated that members in attendance with an item on the agenda would be allowed to address the Board during discussion of that agenda item. Boardmember Brosius asked if any members of the public in attendance wished to address the Board at this time; there was no request to address the Board.

**ITEM III - Motion to Adjourn to Executive Session**

Motion to adjourn to Executive Session by Jeff Millen; second by Kelly McMenemy. Motion passed on a voice vote 3-0. The Board convened into Executive Session at 2:08 p.m.; the Board meeting was called back to order at 2:29 p.m.

**ITEM IV – Application to Enter Into Deferred Retirement Option Plan (DROP) Program**

Motion by Jeff Millen to approve the applications of **David M. Humble**, **Renee L. Page** and **Nathan P. Ryberg** to enter the Deferred Retirement Option Plan (DROP) Program; second by Kelly McMenemy. Motion passed on a voice vote 3-0.

**ITEM V – Retirement Applications**

Motion by Jeff Millen to approve the applications of **Daniel K. Brown** to retire from DROP with a retirement date of April 14, 2016 and of **Jeffrey Lane** to retire from DROP with a retirement date of May 12, 2016; second by Kelly McMenemy. Motion passed a voice vote 3-0.

Motion by Jeff Millen to approve the application of **Julie A. Werhnyak** for normal retirement with a retirement date of May 5, 2016; second by Kelly McMenemy. Motion passed on a voice vote 3-0.

#### **ITEM VI – Hearing for Accidental Disability Benefits**

Boardmember Brosius stated that the initial hearing on the application for accidental disability benefits of Darin W. Mowery was held on February 3, 2016. Boardmember Brosius asked Mr. Mowery if he wanted to address the Board; Mr. Mowery did not wish to do so. Motion by Kelly McMenemy to approve the application for accidental disability benefits of **Darin W. Mowery** based on the IME results and the following questions and answers submitted by Dr. Michael Steingart, D.O., on the Form P5-LB-A, Accidental Disability Questionnaire:

1. Does the employee have the physical or mental condition that is the basis for the disability application? **YES**
2. Does the injury or condition totally prevent the employee from performing a reasonable range of duties with the employee's job classification? **YES**
3. Does the injury or condition permanently prevent the employee from performing a reasonable range of duties within the employee's job classification? **YES**
4. Was the injury or condition the result of an event incurred during the performance of the employee's duty? **YES**
5. During your examination of all medical evidence, did you discover any pre-existing conditions or injuries that contributed to the claimed disability? **YES**. Boardmember McMenemy noted that this was clarified in the IME report in which Dr. Steingart stated there was a pre-existing condition but the condition was aggravated by Mr. Mowery's on-the-job duties as a police officer.
6. Are there conflicts in the medical evidence? **NO**

Boardmember Brosius asked if there was any clarification or addition to any of the information read into the record; there was none. Second by Jeff Millen; motion passed on a voice vote 3-0. **Note: This item is continued under Agenda Item VII on page 3.**

#### **ITEM VII – Rehearing of Applications for Accidental Disability Benefits**

Boardmember Brosius noted the initial re-hearing on the application for accidental disability benefits of James Click occurred on December 3, 2015. Motion by Jeff Millen to approve the application for accidental disability benefits of **James Click** based on the IME results and the following questions and answers from the Accidental Disability Questionnaire, Form P5-LB-A, prepared by Dr. Jack L. Potts, M.D.:

1. Does the employee have a physical or mental condition that is the basis for the disability application? **YES**
2. Does the injury or condition totally prevent the employee from performing a reasonable range of duties with the employee's job classification? **YES**
3. Does the injury or condition permanently prevent the employee from performing a reasonable range of duties within the employee's job classification? **YES**
4. Was the injury or condition the result of an event incurred during the performance of the employee's duty? **YES**  
Boardmember Millen noted that Dr. Jack L. Potts clarifies in the IME report that the condition is the result of multiple events over time, not the result of a singular event.
5. During your examination of all medical evidence, did you discover any pre-existing conditions or injuries that contributed to the claimed disability? **NO**.
6. Are there conflicts in the medical evidence? **NO**

Boardmember Brosius asked if there was any clarification or addition to any of the information read into the record; there was none. Second by Kelly McMenemy; motion passed on a voice vote 3-0.

Local Board Secretary Renie Broderick requested that the Board read into the record the Board's responses to the "Local Board Response" questions at the top of the Accidental Disability Questionnaire Form P5-LB-A. Boardmember Millen read the questions from the Form P5-LB-A out loud and the Board responded as listed below:

1. Did the employee file the application after the disabling incident, or within one year of ceasing to be an employee? **YES**
2. Did (or will) the employee terminate by a reason of disability? **YES**
3. Did employment terminate based on a disciplinary issue? **NO**
4. If the member's period of DROP has ended, *if applicable*, did (or will) the employee terminate by a reason of disability? This question is **not applicable**.
5. Is the employee still working a position within their job classification that the Local Board considers a reasonable range of duties position? **NO**
6. Has the employee refused a position within their job classification that the Local Board considered a reasonable range of duties? **NO**
7. Did the injury or condition occur prior to the current PSPRS membership date? **NO**
8. Was the injury or condition the result of an event incurred during the performance of the employee's duty?  
**YES**

Ms. Broderick noted that the Board will also need to read the questions/answers into the record for the previous agenda item pertaining to Darin Mowery. Board Legal Counsel Cynthia Kelley confirmed that it is best if the Board answers those questions during the determination for each specific agenda item.

**Continued: ITEM VI, Hearing for Accidental Disability Benefits – Darin W. Mowery:**

Boardmember McMenemy read the "Local Board Response" questions from the top of Form P5-LB-A out loud and the Board responded as listed below:

1. Did the employee file the application after the disabling incident, or within one year of ceasing to be an employee? **YES**
2. Did (or will) the employee terminate by a reason of disability? **YES**
3. Did employment terminate based on a disciplinary issue? **NO**
4. If the member's period of DROP has ended, *if applicable*, did (or will) the employee terminate by a reason of disability? This question is **not applicable**.
5. Is the employee still working a position within their job classification that the Local Board considers a reasonable range of duties position? **NO**
6. Has the employee refused a position within their job classification that the Local Board considered a reasonable range of duties? **NO**
7. Did the injury or condition occur prior to the current PSPRS membership date? **NO**
8. Was the injury or condition the result of an event incurred during the performance of the employee's duty?  
**YES**

Boardmember McMenemy noted that the answers to Questions #7 and #8 above were based on the clarification in Dr. Steingart's IME report.

**Continued: ITEM VII – Rehearing of Applications for Accidental Disability Benefits**

Boardmember Brosius opened the re-hearing on the application for accidental disability benefits of **William Vanek**. Mr. Dale Norris, legal counsel for William Vanek, addressed the Board and requested that Mr. Vanek be approved for a second IME. Mr. Norris noted that information in the IME report prepared by Dr. Kipling Sharpe was inconsistent with his answers on the Accidental Disability Questionnaire, Form P5-LB-A. Specifically, Dr. Sharpe states that there was no pre-existing condition, yet in answering question # 4 on the Accidental Disability Questionnaire Form P5-LB-A states "NO", that the injury was not a result of Mr. Vanek's job duties. However, there is nothing in the IME report that would give rise to that answer. Specifically, in the report conclusions, Dr. Sharpe states that the "condition is likely due to underlying degenerative changes.....which was aggravated by the stair climbing while at work"; Dr Sharpe then reiterates in the written report that there is no evidence of a preexisting condition. Based on those inconsistencies, the Board needs to seek a second IME that will be consistent in the medical findings. Mr. Norris also stated that Mr. Vanek was accompanied to the IME appointment by his wife, who is a nurse. Both of them were shocked by Dr. Sharpe's behavior when conducting the IME. Boardmember Brosius indicated that Mr. Vanek previously addressed the Board on



this issue and asked Mr. Vanek if he wished to add anything. Mr. Vanek stated that he submitted a letter to the Board stating his concerns; all Boardmembers present acknowledged they received the letter as part of the rehearing request. Mr. Norris indicated that he had no further information to present. Motion by Jeff Millen to send Mr. Vanek for a second IME based on the conflicting medical information, including inconsistencies in Dr. Sharpe's IME report; second by Kelly McMenemy. Motion passed on a voice vote 3-0. Boardmember Brosius addressed Mr. Vanek, stating that someone would contact him regarding scheduling the second IME.

**ITEM VIII – Application for Survivor's Benefits:**

Ms. Broderick stated that this application was originally approved by the Board on March 3, 2016. The application was subsequently revised due to a calculation error by the State and requires re-approval from the Board. Motion by Jeff Millen to approve the revised application for Survivor's Benefits of **Victoria Kells**, surviving widow of **Dan Kells**; second by Kelly McMenemy. Motion passed on a voice vote 3-0.

**IX – Board Legal Counsel Update Regarding Taxation of Disability Benefits**

Ms. Kelley referred to copies of pages provided to the Board from the PSPRS Member Handbook, which explain benefit calculations and taxation rates. Ms. Kelly stated that at a previous meeting, the Board asked questions about the taxation rate for someone who was hired after 2012 and subsequently retired after 25 years with an accidental disability benefit. If the member actually has 25 years of service, the benefit would be at 62.5% of average monthly compensation and that is not taxed. The Board also previously asked questions about computing the benefit amounts. There are changes for members hired after 2012; they are called Tier 2 members. If a Tier 2 member retires under accidental disability at 20 years, it isn't 62.5%; it is 4% less per year for every year you are under 25 years. Therefore if a Tier 2 member retires at just under 20 years, the benefit is at 42.5%, which is non-taxable.

Boardmember McMenemy stated that the taxation part was clear; prior to 2012 up to 50% was tax free, everything after that was taxable. For Tier 2, then all 62.5% is tax free, with anything above that being taxable. The real question is how that is calculated. The Board discussed benefit calculations in general. Ms. Kelley stated that the state statute covering this is ARS 38-845.

**ITEM X - Future Meeting Date**

The next meeting is May 5, 2016.

**ITEM XI - Future Agenda Items**

- Benefit Calculation Examples
- Lateral Transfers – Prior PSPRS Employer Medical Exams

**Adjournment**

Motion to adjourn by Kelly McMenemy; second by Jeff Millen. Motion passed unanimously on a voice vote 3-0. The meeting adjourned at 2:49 p.m.



Renie Broderick  
Local Board Secretary